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NATIONAL PARLIAMENTS UNDER ‘EXTERNAL’  
FISCAL CONSTRAINTS.  
THE CASE OF ITALY, PORTUGAL, AND SPAIN  
FACING THE EUROZONE CRISIS

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# ABSTRACT

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The Eurozone crisis and the following reaction on the part of the European and national institutions are deemed to have severely undermined parliamentary prerogatives and their role as budgetary authorities. Such outcome has occurred in a context where the inter-institutional balance within the EU Member States, in particular the relationship between the legislative and the executive branches of government, for a long time has been reshaped by the process of European integration in favour of the executives.

The aim of the paper is to assess whether the Eurozone crisis has really led to a marginalization of national parliaments; or, rather, according to the measures adopted at European and national level, it can be seen as an opportunity for legislatures to redefine their functions in the constitutional system and to strengthen their position.

The paper will be based on a comparative analysis of the impact of the reform of economic governance in the EU on national parliaments in three Eurozone countries – Italy, Portugal, and Spain – which have benefited from measures of financial support or assistance from the EU-IMF, although each of them to a different degree. The reaction and legal adaptation of the three national parliaments to new financial constraints has also been affected by the peculiar feature of the form of government and by the role played by other national institutions, e.g. courts and fiscal councils.

*Keywords:* Eurozone crisis – national Parliaments – Constitutional Law – Italy – Portugal- Spain

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# 1. INTRODUCTION

It is widely acknowledged that the position of national parliaments has been negatively affected by the reform of the economic governance in the EU.<sup>1</sup> After regaining some of the authority lost throughout the process of European integration thanks to the Treaty of Lisbon, just a few years after, due to the Eurozone crisis, at first look it appears that they have been marginalized again. Indeed, the EU law stemming from the reform of the economic governance, from the amendment of Article 136 TFEU to the six-pack and the two-pack, almost completely disregard national parliaments. Interestingly it has been one of the most criticized instruments adopted in the aftermath of the crisis, the Fiscal Compact (FC),<sup>2</sup> an international agreement outside the EU legal framework signed by all EU member states but the UK and the Czech Republic, which explicitly recognizes a role for the national parliaments of the contracting parties – in practice also of the UK and the Czech Parliaments are involved – in controlling the implementation of the treaty together with the European Parliament (Art. 13 FC).<sup>3</sup>

Yet, the implementation of the reform of the European economic governance at national level can bring some innovations on the long standing operation of national parliaments, in particular in terms of enhanced transparency and strengthening of oversight and scrutiny powers. The crisis appears to have forced Parliaments to evolve and re-adapt. Although one could argue that the main ‘victims’ or ‘losers’ of the EU integration, national parliaments,<sup>4</sup> have been further jeopardized by the withdrawal of a significant part of the budgetary powers, traditionally endowed in representative and elected assemblies, in favour of the EU intergovernmental or more technical institutions, i.e. the Commission and the European Central Bank (ECB), such a loss of autonomy has likewise affected

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<sup>1</sup> See M. Maduro, ‘A New Governance for the European Union and the Euro: Democracy and Justice’, *RSCAS Policy Paper*, n° 11, EUI, Florence, 2012, p. 6 ff., B. Crum, ‘Saving the Euro at the Cost of Democracy?’, *Journal of Common Market Studies*, vol. 51, n° 4, 2013, p. 614-630, M. Everson & C. Joerges, ‘Who is the guardian of constitutionalism in Europe after the financial crisis’, in S. Kröger (ed.), *Political Representation in the European Union. Still Democratic in Time of Crisis?*, Routledge, London, 2014, P. L. Lindseth, ‘Power and Legitimacy in the Eurozone: Can Integration and Democracy Be Reconciled?’. In M. Adams, F. Fabbrini & P. Lerouche (eds.) *The Constitutionalization of European Budgetary Constraints*, Oxford-Portland, OR, Hart Publishing, 2014, p. 379-398.

<sup>2</sup> On the Treaty on stability, coordination, and governance in the European and Monetary Union, so-called ‘Fiscal Compact’, see P. Craig, ‘The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism’, *European Law Review*, vol. 37, 2012, p. 231 ff

<sup>3</sup> According to Art. 13 FC, ‘As provided for in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty.’

<sup>4</sup> See J. O’Brennan & T. Raunio, ‘Deparliamentarization and European integration’, in J. O’Brennan & T. Raunio (eds.) *National parliaments within the enlarged European Union. From ‘victims’ of integration to competitive actors?*, Routledge, London and New York, 2007, p. 1-26.

national executives that are no anymore independent in setting the general and specific directions of the financial and economic policies.

Even though this does not certainly lead to state that after the Eurozone crisis parliaments are much stronger than before, something that does not seem true, perhaps the reform of the economic governance has provided national parliaments with an input to exercise in a more systematic way powers that they already had or to conceive and arrange them according to new formats.<sup>5</sup> Such a transformation does not occur equally, with the same intensity, and timing in all the Member States, and the process of adaptation is still underway. Also there are many asymmetries as for the position of the Member States and thus of their parliaments in the Eurozone crisis.<sup>6</sup> Consequently, the degree of parliamentary autonomy on fiscal and budgetary matters varies a lot depending on the country. The Parliaments affected by more European and international constraints are those of the 18 states which adopt the euro and within the Eurozone countries those that have benefited from financial assistance or support.<sup>7</sup> Concerns have been addressed to the potential creation of ‘second class’ parliaments, while some legislatures, like the German *Bundestag*, have regained significant influence up to the point to become able to condition substantially the development of some Euro-national procedures of the economic governance.<sup>8</sup>

The present paper analyses if and how the position of the national parliaments of Italy, Portugal, and Spain has changed in reaction to the Euro-crisis by looking at the legal norms which regulate their role and powers after the reform of the economic governance and at their first implementation. The paper also tries to explain from which direction and institution the changes in the parliamentary positions have been driven, whether on the part of the parliament itself or by other actors. The Italian, the Portuguese and the Spanish parliaments have been chosen as case study in the light of their structure, of the different inter-institutional relationship existing between the parliament and the executive, and of their economic situation.<sup>9</sup>

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<sup>5</sup> The analysis of the relationship between Parliaments and citizens, though certainly crucial also during the Eurozone crisis, is beyond the scope of the present paper that focuses mainly on the position and powers of Parliaments in the institutional framework.

<sup>6</sup> See K. Tuori & K. Tuori, *The Eurozone Crisis. A Constitutional Analysis*, Cambridge, Cambridge University Press, 2014.

<sup>7</sup> There are, however, also non-Eurozone countries subject to strict conditionality, given the financial support they got, like Latvia (before it became a member of the Eurozone) and Romania.

<sup>8</sup> On the asymmetries arising between national Parliaments, see K. Auel & O. Höing, ‘Scrutiny in Challenging Times – National Parliaments in the Eurozone Crisis’, *European Policy Analysis*, n° 1, 2014, [www.sieps.se](http://www.sieps.se) and C. Pinelli, ‘La giurisprudenza costituzionale tedesca e le nuove asimmetrie fra i poteri dei parlamenti nazionali dell’eurozona’, [www.costituzionalismo.it](http://www.costituzionalismo.it), 25 March 2014.

<sup>9</sup> The paper has benefited from the information collected in the national reports on Italy, Portugal and Spain, written in the framework of the ‘Constitutional Change through the Euro-Crisis Law’ project, run by the Law Department of the European University Institute and funded by the EUI Research Council (2013-2015). In particular, Leonardo Pierdominici has drafted the report on Italy; Maria Luisa Ribeiro Lourenço & Benedita Queiroz, the report on Portugal; Mireia Estrada Canamares & Germán Gomez Ventura, the report on Spain.

While the Portuguese Parliament is a unicameral legislature, the Italian and the Spanish Parliaments are bicameral though showing important differences. Indeed, since 1948 Italy has always had a symmetric and perfect bicameralism, meaning that the two Chambers are provided exactly with the same powers and are entitled to vote the confidence to the executive. By contrast, within the Spanish *Cortes* the Senate is only entitled to adopt a suspensive veto on legislation and is placed outside the confidence relationship with the Government. Thus the Congress of Deputies, the lower chamber of the Spanish Parliament, enjoys a predominant position in the legislative process as well as in the oversight procedures.

As for the economic and financial conditions, the paper focuses on three Eurozone countries that received or are still receiving financial assistance or support. This does not mean, however, that they are subject precisely to the same financial constraints and burdens by the European and international authorities. Indeed, Italy, as most Eurozone Member States, is facing macroeconomic imbalances and received financial support from the ECB in 2011 through the Securities Markets Programme (the ECB purchased 100 billion euro of Italian bonds). Nonetheless, after benefiting of the support of the ECB during the Summer of 2011, Italy has never declared the bailout nor has asked for financial assistance and has been able to close the excessive deficit procedure in 2013. By contrast, Spain is still subject to both excessive deficit and macroeconomic imbalances procedures and has just exited from the financial assistance programme for the financial sector started in 2012. Finally, within this group of three Member States Portugal is by far the country subject to the most intrusive plot of external legal and economic constraints. Portugal is currently facing an excessive deficit procedure and is subject to strict conditionality, given the bailout declared in 2011 and the assistance provided by means of the European Financial Stabilisation Mechanism (EFSM), established under EU law by Council Regulation EU n. 407/2010 of 11 May 2010, the European Financial Stability Facility (EFSF), a private fund to which the Eurozone member states were shareholders and based in Luxembourg (replaced by the permanent stability mechanism), and directly by the International Monetary Fund (IMF).<sup>10</sup>

The hypothesis behind the paper is that the existing domestic constitutional architecture and the economic conditions of the member states can influence the parliamentary ‘response’ to the Euro-crisis. The paper is devised as follows: section 2 looks at the constitutional norms dealing with parliamentary powers on budgetary matters and on EU affairs, both being relevant to assess the role

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<sup>10</sup> On 18 May 2014 Portugal officially exited the EFSF financial assistance programme, but still remains subject to the ESM’s Early Warning System about loan repayments and to the EU and the IFM supervision in the light of the further assistance provided.

of national Parliaments in the new economic governance;<sup>11</sup> section 3 focuses on the time constraints imposed upon parliamentary procedures, in particular with regard to international agreements and the European Treaties amendment dealing with the Eurozone crisis; section 4 deals with the transparency problem and with the information asymmetry between Parliaments and Governments about the European side of the new economic governance; section 5 analyses the developments occurring about parliamentary scrutiny and oversight powers; section 6 tries to examine potential cases of co-decision and of veto exercised by Parliaments against the Executives; finally, section 7 draws some preliminary conclusions.

## **2. THE CONSTITUTIONAL PROTECTION OF PARLIAMENTARY PREROGATIVES DURING THE EUROZONE CRISIS**

### **2.1 The Constitution**

Art. 3.2. of the Fiscal Compact states, in its last sentence, that the ‘correction mechanism shall fully respect the prerogatives of national Parliaments’. However, whether Parliaments are actually guaranteed or not mainly depends on national law.

The first instrument for the protection of parliamentary prerogatives in the context of the present financial crisis is represented by the Constitution. The Constitutions of the three member states under examination show a different degree of ‘commitment’ in order to preserve the budgetary and fiscal powers of the Parliaments. While all of them empower the Parliament for the approval of the annual budget and the supervision over its implementation, only some Constitutions are suitable to directly allow the Parliament to play a role within the Euro-national budgetary process. Such a possibility also depends on the constitutional rules about national participation in the EU: indeed, even though only part of the reform of the European economic governance forms part of EU law, it is mostly by means of the interplay between national and EU institutions – the Commission, the Council, the European Council, the ECB, etc. – that Euro-crisis measures are conceived and implemented.

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<sup>11</sup> On the participation of national parliaments in EU affairs, see the national reports drafted within the OPAL network and forthcoming in C. Heffler, C. Neuhold, O. Rozenberg, J. Smith, W. Wessels (eds.), *Palgrave Handbook on National Parliaments and the EU*, 2014. The reports are currently available at <http://www.pademia.eu/publications/opal-country-reports/>



For example, the Spanish Constitution, even after the reform of Art. 135 Const., which constitutionalised the balanced budget rule in 2011, is devoid of provisions that protect or enhance the role of the *Cortes Generales*.<sup>12</sup> Moreover, also the participation of the Spanish Parliament in the EU decision-making process lacks a constitutional coverage. Prior to the ratification of the Fiscal Compact, of the TESM, and of the amendment to Art. 136 TFEU, the Houses of Parliament could request the Constitutional Court to judge on the compliance of those treaties with the Constitution (Art. 95.2 Const.), should a doubt arise about the prospective violation of the parliamentary prerogatives. However, the Parliament did not use such a power.

Likewise in Italy the Parliament does not enjoy any constitutional protection as for its involvement in EU affairs. Yet, for the first time ever, constitutional law n. 1/2012, which has also introduced the balanced budget clause into the Italian Constitution, provided the Parliament with scrutiny – i.e. *ex ante* control – and the oversight – i.e. *ex post* control – powers on public finance, in particular on the balance between revenues and expenditures and on the quality and quantity of the public administrations' expenditures. (Art. 5.4 constitutional law n. 1/2012). By the same token, this constitutional law requires the creation of the fiscal council – the independent institution entitled to check the sustainability of the public accounts (Art. 3.2. of the Fiscal Compact) – within the Parliament, according to what specified by the parliamentary rules of procedure. Such provisions are able to strike the inter-institutional balance very much in favour of the Parliament, compared to the situation pre-Fiscal Compact.<sup>13</sup>

In Portugal the Constitution has not been changed after the reform of the economic governance: the super-majority of two-thirds requested in order to have a constitutional amendment passed was impossible to reach (Art. 286). Art. 105.4 Const. already contained a balanced budget clause, although it has been generally interpreted as having a programmatic rather than a strictly binding nature.<sup>14</sup> By looking at constitutional provisions, the position of the Portuguese Parliament – at least in principle – appears to be secured in the budgetary process and in relation to EU affairs. The budget is drawn up on the basis of the multi-annual planning options adopted by the Parliament, upon governmental proposal (Art. 105.2 Const.); the execution of the budget is scrutinized by the Assembly and the Court of Auditors (Art. 107); the parliamentary authorization is required for the Government in order to contract and grant loans and other lending operations, also 'setting the upper limit for guarantees to be given by the Government in any given year' (Art. 161.h Const.),

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<sup>12</sup> See V. Ruiz Almendral, 'The Spanish Legal Framework for Curbing the Public Debt and the Deficit', *European Constitutional Law Review*, vol. 9, n. 2, 2013, p. 189-204.

<sup>13</sup> See C. Fasone & E. Griglio, 'Can Fiscal Councils Enhance the Role of National Parliaments in the European Union? A Comparative Analysis', in B. de Witte, H. Héritier, A.H. Trechsel (eds.) *The Euro Crisis and the State of European Democracy*, Fiesole, EUI, RSCAS and EUDO, 2013, p. 264-305.

<sup>14</sup> 'The Budget shall provide for the income needed to cover expenditure (...)'.

which seems particularly relevant in the present context of the Portuguese bailout. Moreover, the Portuguese Parliament has been granted a constitutional protection as for its participation in EU decision-making process and the Government must inform the Parliament ‘in good time’ as for the developments of the EU integration process (Arts. 163.f and 197.i). It should be noted that the Portuguese *Assembleia da República* is by far the most active national Parliament in the EU as for the number of opinions transmitted to the European Commission on EU draft legislative acts, which account for more than 30% of all opinions addressed to the Commission and although they are usually issued in support of the European proposals.<sup>15</sup> With this regard, it has been argued that also thanks to the legislative reforms and the amendments of the parliamentary rules of procedure adopted from 2006 to 2010 the position of the Portuguese Parliament towards the Government on EU affairs has been significantly strengthened and made more autonomous.<sup>16</sup> However, as will be clarified at the end of this section, the combined effect of the rescue package and of the decisions of the Portuguese Constitutional Court in 2012 and 2013 appears to have severely affected the position of the Parliament in a much more extensive way than in Italy and in Spain.

## 2.2. Constitutional case-law

In Italy, Portugal and Spain the Constitutional Courts have not acted in support of parliamentary prerogatives during the Eurozone crisis. In other words, in these countries there is no line of constitutional judgments acknowledging a protected position to the Parliament, in the light of its overall budget responsibility that is directly linked to the democratic principle. By no means a position comparable to the one taken by the German Constitutional Court from 2011 onwards can be found.<sup>17</sup>

The lack of ‘parliamentary-friendly’ judgments is partly due to the limited access to the Constitutional Court, for example in Italy, where no individual complaint or *Organstreit* proceedings from within the Parliament can be brought before the Court. In part the Italian and the Spanish Constitutional Courts have developed a very cautious approach in favour of the compliance with financial constraints and with the austerity measures requested at European level (see It. CC no. 264/2012 and STC no. 134/2011). Thus it does not matter what position has the Parliament

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<sup>15</sup> See European Commission, *Annual report 2012 on relations between the European Commission and national parliaments*, COM (2013) 565 final, Brussels, 30 July 2013, p. 4.

<sup>16</sup> See D. Jancic, ‘The Portuguese Parliament: Blazing the Trail to the European Scrutiny Trophy?’, *Interdisciplinary Political Studies*, Vol. 1, No. 1, 2011, p. 93-108.

<sup>17</sup> See M. Wendel, ‘Judicial Restraint and the Return to Openness: The Decision of the German Federal Constitutional Court on the ESM and the Fiscal Treaty of 12 September 2012’, *German Law Journal*, vol. 14 no. 1, 2013, p. 21-52 and I. Pernice, ‘Domestic Courts, Constitutional Constraints and European Democracy: What Solution for the Crisis?’. In M. Adams, F. Fabbrini & P. Lerouche (eds.), cit., p. 297-318.

taken: these Constitutional Courts – with a few exceptions (see It. CC no. 78/2010) – are used to uphold or to strike down parliamentary legislation depending on whether it is in line with the European obligations and with the medium term objective (MTO) or not. However these constitutional judges can manage the effects of their judgments in a way as to limit their legal implications for the Parliament and to leave it discretion on the action to be taken. For example, when the Spanish Constitutional Court judges a law or a legislative provision unconstitutional often time refrains to annul it. Thus it calls upon a subsequent action by the Parliament as to repeal and amend the contested provisions.

The same kind of judicial techniques were used by the Portuguese Constitutional Court until 2012 (decision n. 353/2012), for example by declaring provisions of the Budget Act unconstitutional while at the same time suspending the effects of its judgment since the budget was already in operation. However since May 2011, when Portugal declared the bailout and thus has been subject to strict conditionality, the attitude of the Court has changed, taking a position that is rather unique compared to other Courts. The Portuguese Constitutional Court has started to declare national measures of implementation of the Memorandum of Understanding and of the Financial and Assistance Programme unconstitutional because they had violated fundamental principles and rights entrenched into the Constitution. International and European obligations to which the Portuguese government and then the Parliament had committed to observe in exchange for the financial assistance cannot limit principles like the principle of equality, the principle of legitimate expectation of workers' allowance and the principle of proportionality. Such a reaction on the part of the Portuguese Constitutional Court has led to a further limitation of parliamentary prerogatives. Not only has the Portuguese Parliament been forced by the dramatic financial situation to adopt measures negotiated between the national government and the institutions providing financial assistance, without a substantial power to interfere on their content; but the Constitutional Court has even sanctioned the Parliament by declaring its acts (even budget acts) void (see, e.g., decision n. 183/2013).<sup>18</sup> The budgetary authority of the Portuguese Parliament, severely constrained by the Memorandum of Understanding and by the Economic Adjustment Programme, whose content has been substantially transposed into the Budget Acts, has been ultimately defeated by this line of case

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<sup>18</sup> See J. E. M. Machado, 'The Sovereign Debt Crisis and the Constitution's Negative Outlook: A Portuguese Preliminary Assessment', in X. Contiades (ed.), *Constitutions in the Global Financial Crisis. A Comparative Analysis*, Farnham, Ashgate, 2013, p. 235, M. Nogueira De Brito, *Comentário ao Acórdão nº 353/2012 do Tribunal Constitucional*, in *Direito & política* 2012, p. 108 ff. and R. Cisotta & D. Gallo, 'The Portuguese Constitutional Court case law on austerity measures: A reappraisal', in B. De Witte & C. Kilpatrick (eds.) *Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges*, EUI Working Papers, Law 2014/05, p. 85-94. Other decisions followed very much on the same line, like decisions n. 794/2013 and 862/2013.

law. The judgments detecting the unconstitutionality are never grounded on a possible violation of parliamentary prerogatives; rather they are mainly based on the protection of (social) rights.

### 2.3 The parliamentary rules of procedures

The reform of the economic governance at European level so far has not brought significant changes in the rules of procedures (or standing orders) of the three Parliaments, in spite of the significant transformation of the budgetary process after the launch of the European Semester in 2011.<sup>19</sup> To some extent Parliaments are still testing the new procedures provided by EU and international law, by the new constitutional provisions, where adopted, and by organic or ordinary laws of implementation (see below), before they amend their rules. Thus the parliamentary involvement in the European Semester and in the management of the ESM and of bilateral assistance programmes has been defined mainly by subconstitutional acts and by parliamentary practice, stretching the interpretation of the existing rules of procedure.

In Spain and Italy some new provisions have been adopted, although they have not been inserted into the main body of the rules of procedure. Significantly these new rules are bicameral in nature, meaning that they have been approved jointly by the two Chambers; a fact that highlights the need for a coordinated response between the two branches of the national parliament in face of the reform of European economic governance. In Spain a resolution of the Bureaux of the two Chambers was adopted in 19 July 2011 as to complement the rules of procedure and to set up a parliamentary budget office – the *Oficina Presupuestaria de las Cortes Generales* – based within the Parliament, a sort of Fiscal Council which checks and assesses the execution of the budget and provides information to the legislature. However, this Office, provided by Law n. 37/2010, has started to operate only in 2013, when it was coupled with another independent though non-parliamentary budget authority, the *Autoridad Independiente de Responsabilidad Fiscal* (AIRF).

In Italy, where a parliamentary budget office has just been established (constitutional law n. 1/2012 and organic law n. 243/2012) for the first time ever the Chamber of Deputies and the Senate negotiated a joint protocol for its setting up, which later on will be complemented by updated rules of procedure, although it will not formally be part of them.<sup>20</sup> Indeed, the Italian bicameral system, in spite of its symmetrical nature, has always been featured by a strictly unicameral management of the parliamentary procedures – even those dealing with scrutiny and oversight – and is featured by a very weak cooperation between the parliamentary administrations of the Chamber and of the

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<sup>19</sup> See COSAC, *Nineteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, Brussels, 17 May 2013, p. 22-23, available at [www.cosac.eu](http://www.cosac.eu).

<sup>20</sup> See the joint protocol: *Protocollo per l'attuazione del Capo VII della legge 24 dicembre 2012, n. 234, relativo all'istituzione dell'Ufficio parlamentare di bilancio*. The procedure for the appointment of the members of the parliamentary budget office was concluded on 30 April 2014.

Senate.<sup>21</sup> The parliamentary budget office and the joint protocol are important signals in the opposite direction and both are direct outcome of the new European economic governance.

### 3. TIME CONSTRAINTS

The action of contemporary institutions has been increasingly subject to time constraints. In particular after WWII the expansion of the legislation and of the areas covered by some form of public regulation has pushed towards a more timely and rational organization of institutional decision-making. Such a turn has been especially challenging for Parliaments as spaces open to public debate, where pluralism is guaranteed, and where the timing of law making often clashes with the plethoric composition of the institution, in particular in plenary session. Moreover Parliaments sometimes work according to century-old traditions that are not easily to accommodate with contemporary time constraints. Furthermore in parliamentary (Italy, and Spain) or semi-presidential (Portugal) forms of government – like those under examination – the legislative agenda and parliamentary order of business are mainly shaped by the executive branch. Since long Parliaments have lost the sovereignty of their time and the timing is usually dictated by the government and adjusted to its priority, except for the time reserved by the Constitution or by the rules of procedure for example to minority groups.

The financial crisis has put another external constraint upon parliamentary authority. While the timing of the European Semester – defined by the six-pack and the two-pack – is now standardized, usually also by national law – 2014 is the third year in which the cycle of the European Semester is completed – and all political actors, at EU and national level, Parliaments included, know in advance when they have to submit reports, documents, plans, opinions and recommendations, major problems have been created by the authorization to ratify the international financial instruments of the economic governance or by the implementation of the rescue packages and the payment of the installments in favour of the ‘debtor’ countries. The threat of the financial crisis and of the bailouts has promoted a climate of permanent urgency.

In Spain even the constitutional reform was finalized in record time:<sup>22</sup> from the proposal of constitutional bill to its publication on the Official Journal (BOE) only thirty-two days have

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<sup>21</sup> See L. Gianniti, ‘Per un ragionevole bicameralismo amministrativo’. In A. Manzella & F. Bassanini (eds.), *Per far funzionare il Parlamento : quarantaquattro modeste proposte*, Bologna, Il Mulino, 2007, p. 77-86, and N. Lupo, ‘Il ruolo delle burocrazie parlamentari alla luce dei mutamenti dell’assetto istituzionale, nazionale e sopranazionale’. In *Rassegna Parlamentare*, n. 1, 2012, p. 51-89.

elapsed, from the end of August to the end of September 2011. The constitutional bill was examined by means of the urgency procedure and in *lectura única* – i.e. directly debated and adopted by the *plenum* without prior scrutiny by standing committees –, all the amendments tabled were rejected, except those aiming to correct the wording of the provisions, and the referendum was not requested (Art. 167 Sp. Const.). The overall majority of the two Chambers agreed on the reform, whereas only some nationalist parties or parties of the extreme left, like *Izquierda Unida*, shown their discontent. Even before the reform was adopted, on 8 September 2011, *Izquierda Unida* lodged an appeal before the Constitutional Court on a procedural ground and it asked for the annulment of the constitutional reform vitiated by the use of the urgency procedure. The appeal was declared inadmissible and basically this was the only parliamentary reaction to the reform.

Although the timing was slightly more relaxed, also for the Italian standard the constitutional reform went very fast. It took longer, from September 2011 to April 2012 for the final approval of constitutional law n. 1/2012, because the Italian procedure for constitutional amendments needs the adoption of the same text by each Chamber in two deliberations at intervals of no less than three months one from the other (Art. 138 It. Const.). The approval of the reform in the second deliberations showed such a level of consensus – beyond the two thirds majority required – that not even a constitutional referendum could be requested.<sup>23</sup> When facing the crisis, political groups appear to abandon their traditional struggle between majority and opposition and to create a cross-party alliance, with very few exceptions also in Italy (like North League).

Fast track procedures or the merger in a single debate and instrument of implementation or ratification of several international financial measures has been the rule also in Portugal. There the Fiscal Compact and the TESM were debated jointly and by means of two different parliamentary resolutions their ratification was authorized on 13 April 2012. In spite of the support of the major political parties, criticism arose as for the lack of parliamentary involvement during the previous negotiations as well as the absence of debate in Parliament about two different though linked Euro-crisis instruments. The proposals to apply Art. 295 Pt. Const., which allows to held referenda ‘on the approval of a treaty aimed at the construction and deepening of the European Union’, were disregarded. Although the Fiscal Compact and the TESM are not part of EU law, they contribute to the construction and consolidation of the process of European integration.

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<sup>22</sup> See F. Balaguer Callejón, ‘Presentación’, *Revista de derecho constitucional europeo*, n. 16, 2011 and S. Piedrafita, ‘National Parliaments’ Say on the New EU Budgetary Constraints: The Case of Spain and Ireland’. In M. Adams, F. Fabbrini & P. Lerouche (eds.), cit., p. 319-340.

<sup>23</sup> According to Art. 138 It. Const. the condition for presenting a request for a constitutional (confirmatory) referendum by 500000 citizens, five regional Councils, or one fifth of the members of a House, is that the threshold of two thirds of the members in each Chamber in the second deliberation is not reached, but only the absolute majority of MPs and senators voted in favour.

Except for the concerns expressed by very few parliamentary opponents of the new economic governance and of the procedures used for the implementation with regard to the impairment of parliamentary and people's sovereignty, in the three member states a wide convergence of interests and positions has emerged. Parliamentary debates were extremely constrained and Parliaments appeared almost to abdicate to their role.<sup>24</sup> No parliamentary debate has taken place in Italy, Portugal, and Spain about the crucial measures of financial support and assistance. The inclusion of Italy in the Securities Market Programme of the ECB has been maintained almost secret in spite of the exchange of letters between the President and the incumbent President of the ECB and the Italian Government, which was disclosed in late 2011. Also, except for the case of the bilateral assistance to Greece in 2010, the guarantees provided by Italy in the framework of the EFSF and of the ESM as well as the payment of the installments at the benefit of the bailout countries has been completely neglected by the Italian Parliament.

The Portuguese and the Spanish Parliaments, once the bailout was declared, did not examine the content of their Memorandum of Understanding and Financial Assistance Facility Agreement. They were not involved during the negotiation and the respective Governments chose to consider these agreements as treaties not subject to parliamentary approval before the ratification (Art. 94.2 Sp. Const., Arts. 197.1.c and 200.1.d Pt. Const.).<sup>25</sup> Whether such an outcome was an inevitable choice of the governments caused by the seriousness of the financial crisis and on the need to adopt the rescue package as soon as possible or, by contrast, the Parliaments could have reacted and played a more active role at this stage remains unclear. Legislatures appeared to be very supportive of the governments, often well beyond the parliamentary majority identified after the election, but the lack of information as regards the negotiation and the adoption of the Euro-crisis emergency measures at European and international levels raises doubts on who is responsible for the very limited parliamentary debate.

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<sup>24</sup> By contrast, while lacking in Parliament, the debate was fierce in the academia and literature: see M. Luciani, 'Costituzione, bilancio, diritti e doveri dei cittadini', *Astrid.eu*, September 2012 and F. Balaguer Callejón, 'Presentación', *Revista de derecho constitucional europeo*, n. 16, 2011

<sup>25</sup> What the Portuguese Assembly and the Spanish Congress of Deputies have been able to do is simply to debate and pass the laws implementing the measures agreed through the Memorandum of Understanding. In the case of Spain those measures have been adopted mainly by means of decree-laws issued by the executive and converted into law, without amendments, by the *Cortes Generales* (Art. 86 Sp. Const.).

## 4. THE TRANSPARENCY PROBLEM AND THE INFORMATION ASYMMETRY

The lack of transparency about the negotiation of the rescue packages has effectively impaired the ability of the Parliaments,<sup>26</sup> in particular in Portugal and Spain, to control the government, either because the approach of the legislatures was too deferential towards the executives or because legislatures were not in the condition to exercise any discretion. Due to the political crisis in 2011, the Portuguese Assembly was able to debate the Memorandum of Understanding and the Financial and Economic Assistance Programme only one year after their adoption when the measures agreed with the Troika (ECB, IMF, and European Commission) were included into the annual Budget Act. By the same token, only a few months ago former Spanish Prime Minister Zapatero disclosed to the public the letter received by the ECB in August 2011 – when also the Italian Government received its letter by the ECB – rightly before the constitutional reform was adopted and whose existence he had always refused to admit.<sup>27</sup>

In spite of this scenario, there are, however, strong signals of an increasing attention towards the transparency problem for the Parliaments and several attempts to reduce the information asymmetry in favour of the Governments have been made.<sup>28</sup> While the transparency problem has concerned particularly the budgetary authority of Parliaments facing the bailout, the problem has been gradually overcome within the European Semester, where a process of ‘normalisation’ of parliamentary budgetary procedures has occurred, i.e. defining in advance a stable and coherent schedule of parliamentary activities in the light of the European deadlines.

At the end of 2012/beginning 2013 organic or ordinary laws have been passed in Italy, Portugal, and Spain as to reinforce the right to information of the Parliament. The new law regulating the relationship between the Italian legal system and the EU – Law n. 234/2012, passed in December 2012 – contains provisions specifically addressed to the right to information of the Parliament when dealing with the reform of the economic governance in the EU. The government regularly informs the two Chambers, according to constitutional law n. 1/2012, about the coordination of economic and budgetary policies and the functioning of the financial stability mechanisms and, in particular, on any relevant EU legislative acts or documents, on prospective enhanced cooperations, and on drafts and intergovernmental agreements among the Member States in this field. Although the

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<sup>26</sup> See C. Kilpatrick, ‘On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe’s bailouts’, forthcoming, 2014.

<sup>27</sup> Significantly the letter was published as an annex to his biography: J. L. Rodríguez Zapatero, *El Dilema: 600 Días de Vértigo*, Barcelona, Planeta, 2013, p. 405-408.

<sup>28</sup> See D. Curtin, ‘Challenging Executive Dominance in European Democracy’, *Modern Law Review*, vol. 7, n° 1, 2014, p. 1-32.



Government can invoke the confidentiality of the information transmitted, in any event could such a confidentiality ultimately impair the right to information and participation of the Italian Parliament in EU affairs, based on protocol I to the Treaty of Lisbon (Art. 4, sections 4, 6, and 7 - law n. 234/2012). More specifically on the economic governance, Art. 5.1, law n. 234/2012, states that ‘the Government promptly informs the Chambers about any initiative aiming to the conclusion of agreements with other EU member states on the creation and the strengthening of the rules of fiscal and monetary policy or able to produce significant effects on the public finance.’ The objective here is to avoid that in the future the Parliament will be excluded from the negotiations of agreements, like the Fiscal Compact or the TESM.

In Portugal, law n. 37/2013 – substantially modifying the *Ley de Enquadramento Orçamental* and implementing Directive n° 2011/85EU – has reinforced the right to information of the Parliament in the budgetary process. The principle of transparency has been introduced has a new general rule that shapes the budgetary process and is linked to the principle of sincere cooperation between institutions which share responsibility in this field (Art. 10-C). The Government must send to the Assembly in a timely manner, every month or every three months, depending on the document, a list of information relevant to oversee the execution of the budget (Art. 59.3 and 4), including the financial flow between Portugal and the EU, i.e. also about the use of the ESM. The list provided within law n. 37/2013 is not exhaustive and can be extended upon request of the Parliament, with the Government bound to comply with this additional request of information (Art. 59.6). Moreover the Government must transmit to the Assembly any other domestic document, though related to the participation in the new economic governance, from the annual debt ceiling (Art. 89) to the annual audit report about the implementation of the national reform programme and of the stability programme (given the bailout, also the Financial and Economic Assistance Programme is included), showing the results achieved (Art. 72-A).

Of course, one of the problems that might occur, in Portugal and in Italy, is that there is no mechanism for ensuring the compliance of the Government with its duty to information, lacking effective tools for challenging the constitutional validity of the Government’s inaction or partial compliance with the duty of information (unlike other Eurozone countries as Germany).

In Spain, for example, while it could be potentially allowed to challenge the unconstitutionality of the Government’s inaction before the Constitutional Court, the constitutional protection of the right to information of the Parliament is lacking, unless it will be implicitly derived from Art. 23 Sp. Const., which recognizes the right of the citizens to participate in public affairs directly or through elected representatives. However it is unlikely that such an interpretation will be followed by the Spanish Constitutional Court because there is no explicit right to information in EU matters

established at the benefit of the *Cortes Generales* in the Constitution (like Art. 23.2 GG) nor organic law n. 2/2012 (*de Estabilidad Presupuestaria y Sostenibilidad Financiera*) acknowledges the right to information in favour of the Parliament. Only Law n. 22/2013, the annual Budget Act (*de Presupuestos Generales del Estado para el año 2014*), contains a few provisions about the information to the Parliament during the budgetary cycle: the Government must submit to the Chambers information about public investments and expenditures, either at State or at subnational level, every six months (Art. 14); about the evolution of the public debt every three months (Art. 51); about the public guarantees – i.e. EFSF and now ESM – every three months (Art. 56), and a few others about the management of national public funds.

Although a judicial sanction against the Government is somewhat lacking, the case of the Spanish Parliament shows that the strengthening of the right to information about the decision-making and the implementation of the measures of the new economic governance can be a result of the setting up of the fiscal councils: independent institutions entitled to monitor public accounts and provide macroeconomic forecasts, to be consulted by the legislative and the executive branch.<sup>29</sup> Depending on their composition, on their mandate, and on their powers, fiscal councils can be more or less beneficial for the position of the Parliaments.

The budget office of the *Cortes General* – *Oficina Presupuestaria de las Cortes Generales* – is regulated by law n. 37/2010 and is based at the General-Secretariat of the Congress. It may be asked by the Chambers to provide any study and report about public accounts is needed and is at complete disposal of the *Cortes*. According to law n. 37/2010 and law n. 22/2013 it is primarily by means of this parliamentary budget office that governmental information reach the Chambers and are elaborated, in addition to the independent source of information the office has, given its access to any financial and economic database of the country. During the European Semester the Government must transmit regularly to the *Oficina Presupuestaria*, and indirectly to the two Chambers, several reports about public accounts and the parliamentary budget office will table an annual report before the *Cortes*.

Recently, in November 2013, organic law n. 6/2013 established another fiscal council, this time at the Minister of Economy, the *Autoridad Independiente de Responsabilidad Fiscal* (AIRF), whose independence from the main budgetary authority in the country – the Government – can thus be questioned. This authority does not have a preferential relationship with the Parliament unlike the *Oficina Presupuestaria*. Although the AIRF will be appointed with the consent of the Spanish Congress, the new fiscal council will provide studies, reports, and opinions on request of all public

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<sup>29</sup> On fiscal councils in general, see Lars Calmfors, ‘The Role of Independent Fiscal Policy Institutions’, *CESifo Working Paper*, n° 3367, February 2011, available at: [www.cesifo-group.org/wp](http://www.cesifo-group.org/wp), p. 19-20.

administrations or *ex officio*. Moreover the new authority will provide macroeconomic forecasts and a first draft of the annual Budget Act, will check the stability programme and the execution of the budget, will assess the economic and fiscal programmes of the regions. If the recommendations issued by AIRF are disregarded by the administration to which they are addressed, the administration must give reasons for its conduct. The setting up of both fiscal councils and although AIRF is not an ancillary body of the Chambers is likely to increase the information available on the state of the public finance. Thus the Parliament will have more evidence to evaluate the economic and the fiscal policies of the Government partly on the basis of independent information, whereas so far all the assessment made on public accounts had relied only on the projections and the documents provided by the executive branch.

Also in Italy the Fiscal Council, the recently established parliamentary budget office, is closely connected to parliamentary activity. This is so on the basis of constitutional law n° 1/2012, which requires its setting up within the Chambers, and of Law n° 243/2012, a new source of law in the Italian legal system, a sort of organic law having a domain reserved by the Constitution and approved or amended by absolute majority. The three members of the parliamentary budget office are appointed upon agreement of the Speakers of the two Chambers drawn from a list of ten independent experts chosen by the standing committees on budget and finance by two thirds majority. As many other fiscal councils, the parliamentary budget office provides macroeconomic and financial forecasts, the assessment of the compliance with the Euro-national fiscal rules, of the trends in the public finance, of the macroeconomic impact of major bills, of possible deviations from the medium term-objective and of the activation and use of the correction mechanism. The fiscal council also drafts reports and is heard upon request of the parliamentary standing committees. However, no binding powers are granted. In case of 'significant divergence' between the parliamentary budget office assessment and those of the Government, one third of the member of the Committee on budget can ask the Government to take a position on whether and why it is willing to confirm its assessment or it wants to adjust it to the fiscal council's evaluation.

By contrast, in Portugal such a strong link between the Parliament and the Fiscal Council is lacking. In Portugal the Council of Public Finance has been established by Law n° 22/2011, and appointed one year later, by the Council of Ministers on a joint proposal by the Chair of *Tribunal de Contas* (Court of Auditors) and the Governor of the *Banco de Portugal* (Bank of Portugal). It appears that it is the Court of Auditors the body which entertains a much closer relationship with the Parliament on public finance than this new fiscal council (Art. 214 Pt. Const.; Art. 59, Law n°. 37/2013). Moreover, also in this case, the fiscal council appears devoid of binding powers on the executive branch.

Thus it is clear that, depending on where are they placed and on their composition, fiscal councils can be more or less able to strengthen the right to information of the relevant Parliament, but by no means they are entitled to exercise a veto power against governmental programmes and projections.

## 5. DEVELOPMENTS IN PARLIAMENTARY SCRUTINY AND OVERSIGHT POWERS

The European Semester and in particular the six-pack, the two-pack, and the Fiscal Compact, have identified two main strands of control on national public accounts. Indeed, the procedures design a preventive and a corrective arm. For example, in the first arm the assessment of stability programmes and of budgetary plans can be detected; within the second are the control on the correction of excessive deficits and of macroeconomic imbalances. As a consequence, also Parliaments in general have strengthened the two dimensions of the *ex ante* scrutiny and of the *ex post* oversight.<sup>30</sup>

There are a number of tools Parliaments are using in order to influence and control the activity of the executive. In particular, it seems clear that legislatures are taking advantage from the already well established procedures and rules concerning scrutiny on EU affairs. In other words, national Parliaments are using ‘ordinary’ procedures for participating or controlling the EU decision making process for ‘extraordinary’ purposes, i.e. reacting to the risk of marginalization during the financial crisis, or to become accustomed to brand new and more complex budgetary procedures, where also several European actors can have a say. Thus members of the European Parliament (MEPs) are often invited to take part in committee meetings and European Commissioners are heard before the relevant standing committees.<sup>31</sup> Moreover, given the prominence of the European Council in setting the priorities and the directions of the economic governance, before and after the European Council’s meetings the Heads of Government are often asked to explain the national position before the national Parliament about prospective adjustments of the economic governance, about the re-negotiation of the agreements, and on possible concerns for national interests. Also the cooperation

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<sup>30</sup> See E. Griglio & N. Lupo, ‘Parliamentary Democracy and the Eurozone Crisis’, *Law and Economics Yearly Review*, vol. 1, n° 2, 2012, p. 314-374.

<sup>31</sup> For example, on 15 March 2012 Olli Rehn visited the Portuguese Assembly and the same he did on 17 September 2013, when he was heard before the Committee on Budget of the Italian Chamber of Deputies on the national draft budgetary plan submitted.

with other national Parliaments is used to gain information and improve the ability to control the national executive.<sup>32</sup>

The reform of the economic governance has also changed the balance within each Chamber. Fast-track procedures, a very strict schedule of parliamentary activity, sensitive and confidential information about the rescue funds and bailouts, have made the role of standing committees and even of subcommittees crucial, often at the expenses of the debate in the plenary sessions. In particular, although these issues are all European-related and thus potentially falling under the ‘jurisdiction’ of the committees on EU affairs, parliamentary committees on budget and on finance have become more and more the linchpin of parliamentary procedures. There is no legislative or oversight procedure in which they are not involved.

Overall the scrutiny and oversight powers of the Italian and the Spanish Parliaments have been strengthened as a reaction to the new economic governance, although comparatively less than in other European legislatures (like the German *Bundestag*, also thanks to the protection and the support provided by the case law of the Constitutional Court).

In Spain the parliamentary scrutiny and oversight powers on public finance have been reinforced, although such a strengthening possibly does not compensate the loss of discretion and of decision-making powers that in particular the Spanish Congress had suffered before. Indeed, what was originally a game – i.e. the budgetary process – with two players, the Parliament and the Government, has now become a Euro-national game with multiple actors, international (the IMF), European (in particular the Commission and the ECB), and national. Furthermore, the Spanish Congress has never been particularly powerful on budgetary issues, on which the decisions on the substance have always been taken by the executive. After organic law n° 2/2012, the Spanish Congress adopts the medium term objective as well as the stability and the national reform programmes (Art. 23) and defines the stability objectives that orient the Government in drafting the budget (Art. 15). The main tools used by Spanish deputies, however, still remain parliamentary questions, in particular about the details of disbursements for the ESM.

The Italian Parliament has never been particularly active in the field of scrutiny and oversight on the executive. Much of its time has been devoted to law making, also because of the peculiar power acknowledged to its standing committees to pass laws on their own (Art. 72, third section. It. Const.). Nevertheless the financial crisis has been an input for restructuring the balance between

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<sup>32</sup> According to Art. 13 of the Fiscal Compact (see section 1), the Inter-parliamentary Conference on Economic and Financial Governance in the European Union has been set up ‘to discuss budgetary policies and other issues covered by the Treaty’. The national parliaments and the European Parliament have not been able to agree on the rules of procedure of this conference and its mandate still remains unclear, e.g. on whether this is just a forum of debate or rather it should turn to be a sort of oversight body, which remains a topical issue given the participation of all EU national parliaments and not only those from the contracting parties or from the Eurozone.

parliamentary functions: the loss of decision-making powers in the budgetary process and in the legislative process has been compensated by new procedures and tools for parliamentary scrutiny and oversight since 2009. Already the new framework law on the budgetary process, Law n° 196/2009, contained an *ad hoc* section on parliamentary scrutiny. Art. 4.2 promotes forms of bicameral cooperation on scrutiny on public finance and Art. 4.1. allows the Chambers to orient the Government in the preparation of the budgetary documents. Following the launch of the European Semester, Law n° 196/2009 has been amended as to comply with the new timeline (Law n° 39/2011), although an overall reform after the constitutional revision is still expected. The Italian side of the Euro-national budgetary process starts by the debate in Parliament of the Document of Economics and Finance (DEF), which sets the multi-annual financial framework and the projections of the macroeconomic variables in the next years. The resolution by which each Chamber adopts the DEF is the first act to orient the conduct of the executive towards the approval of the budget. The Minister of Economy is heard before the relevant committees of the Chamber immediately after the European Council provides the policy orientations and a debate takes place on the subsequent drafting of the stability and the national reform programmes. By institutional practice these two programmes are examined by the Parliament before their transmission to the European Commission and although no clear procedure of examination has been formally introduced (Art. 9). Constitutional law n° 1/2012 has further changed the landscape of parliamentary oversight by recognizing constitutional protection to the oversight function on public finance, although the missing opportunity of the reform of parliamentary rules of procedure has not allowed to exploit completely this new perspective. After the experience of the Fiscal Compact and of the TESM, Law n° 234/2012, affirms that during the negotiation of the treaties that introduce or strengthen the rules on fiscal and monetary policy the Government is bound to follow the instructions received by the Chambers. If the compliance with the parliamentary instructions is not feasible, then the President of the Council of Ministers must explain to the Chambers the reasons for the position taken in spite of the inputs of the Parliament. However, no legal sanctions on the Government – except to force it to resign – are attached to such a lack of compliance.

Finally, in the case of Portugal, in addition to recurrent procedures and tools used also by other legislatures – e.g. hearings of the Ministers, adoption of resolutions, etc. – the extraordinary situation of the Portuguese bailout has led the Parliament to use measures that are usually not connected to the budgetary process. Since 2011 the Portuguese Parliament has established several committees of inquiry in order to investigate issues of common concerns and all related to the

economic governance.<sup>33</sup> According to Art. 178 Pt. Const., committees of inquiry can be formed *ad hoc*, only for the duration of the inquiry – thus having a temporary nature –, and ‘shall possess the investigative powers of the judicial authorities.’ Moreover a special Committee to support the implementation of the measures of the Financial Assistance Programme for Portugal has been in operation since the parliamentary term started in 2011. This committee works in close coordination with the other standing committees of the Assembly and controls the compliance of the national measures with the Memorandum of Understanding and the correct implementation of the Memorandum by the Government. However, as said (section 2.2.), by threatening a violation of the Memorandum of Understanding and of the Financial Assistance Programme by Portugal, the judgments of the Portuguese Constitutional Court in the last three years have forced the Government to re-negotiate the terms of the agreement with the EU and with the IMF. As a consequence the Parliament has been only in the position to take cognizance of the ongoing legal developments without been actually able to orient them.

The several fiscal constraints under which Portugal is operating and the case law of the Constitutional Court that challenged the compliance with the international and European obligations undertaken, both elements lacking in Italy and in Spain, limit the autonomy and the discretion of the Portuguese Parliament in a way that the other two legislatures have not experienced so far. Thus this further explains the resort to exceptional instruments like committees of inquiry.

## 6. CO-DECISION AND VETO POWER?

It is commonly acknowledged that the reform of the economic governance has narrowed the decision-making powers of national Parliaments in the budgetary process – already narrow in parliamentary and semi-presidential forms of government – and the discretion of national political institutions in the fiscal and economic policies. Only by tracing the intense correspondence between the Commission, the Council and the ECB on the one hand, and the national Governments and Parliaments, on the other, it is possible to detect whether this is really true. Some exchanges of letters – and the cases of Italy and Spain are particularly telling with this regard – have remained or could have remained secret. In other occasions, it has to be seen which institution – national or

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<sup>33</sup> Comissão Parlamentar de Inquérito ao Processo de Nacionalização, Gestão e Alienação do Banco Português de Negócios S.A., Comissão Eventual para Acompanhamento das Medidas do Programa de Assistência Financeira a Portugal, Comissão Parlamentar de Inquérito à Contratualização, Renegociação e Gestão de todas as Parcerias Público-Privadas do Sector Rodoviário e Ferroviário, Comissão Parlamentar de Inquérito à Celebração de Contratos de Gestão de Risco Financeiro por Empresas do Sector Público.

European and parliamentary or governmental – is really the author of a certain measure, the authority from which the idea to adopt such a measure actually stems. The content of the country-specific recommendations, guidelines, and in-depth reviews by the European institutions do not originate *ex abrupto* in the corridors of the European Commission in Brussels, but usually find their *raison d'être* in a commitment previously made by the Government, alone or in agreement with the Parliament. Often the constraints upon the national budgetary authorities are self-imposed or co-decided.<sup>34</sup> The fact that in the new economic governance is anything but easy to understand who has taken a certain fiscal and economic decision in its form and substance creates concerns about the chain of responsibility of the current decision-making process. In this framework even more challenging is to understand if a national decision is taken by the Government alone or if an influence of the Parliament does exist.

Under certain conditions, however, the decision can be clearly attributed to the Parliament, usually as a form of exercise of veto powers. In Italy, Portugal and Spain a parliamentary assent, usually by means of a law, is required for the payment of the installments of the ESM, but a parliament alone is not able to block the functioning of the overall mechanism and it is unlikely that once the ESM is accepted then a Parliament does not want to authorize the relevant disbursement.

There is another subject area in which the Parliaments of this three Eurozone Member States have veto powers, the definition of the exceptional circumstances that allows the temporary deviation from the medium term budgetary objective (MTO). The exceptional circumstances and events at stake are already outlined by EU Regulation n° 1177/2011 of the six-pack, although these provisions can be complemented at national level. In particular the resort to these peculiar situations – i.e. natural disasters or any unusual event outside the control of a Member State – as to justify the lack of compliance with the MTO must be authorized by the Parliament by absolute majority (in the three legislatures). Reaching this *quorum* is not a problem for legislatures where the majority party or coalition is stable and can count on a number of MPs beyond the absolute majority; however, it might become a problem if a minority government is in office or if the ruling coalition is not particularly cohesive (in Italy and Portugal, for example). However, given the consensual spirit which has inspired so far Parliaments in the implementation of the reform of the economic governance in the three countries and the serious threat posed by one of the exceptional circumstances to be invoked, it is unlikely that a Parliament would reject the proposal of the Government to resort to this instrument.

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<sup>34</sup> I am grateful to Nicola Lupo for the discussion on this point.



Finally, as a last resort, Parliaments could also exercise veto powers on the Government as to force them to resign: a political sanction with legal implications against their economic policy. Being the Government dependent on the confidence relationship with the Parliament, the latter could either adopt a motion of no confidence or could defeat the Government's position on economic and fiscal measures that have a highly political significance or that are required for the fulfillment of the European Semester. This hypothesis has become reality in Portugal in 2011.

On March 2011 Prime Minister José Sócrates was forced to resign after the rejection of the governmental amendments to the Stability Pact 2011 that every Eurozone country must transmit to the European Commission by mid-April. However, on 6 April 2011 the resigning Prime Minister declared the bankruptcy of the public finance and the day after he notified to the European Commission, to the Eurozone countries, and to the IMF the request for financial assistance, which was granted in May. The general elections for the Parliament were held on 5 June 2011, led to the defeat of the then ruling majority and in particular of the socialists. The center-right Social Democratic Party – which conquered also the Presidency in January 2011 – becomes the first party of the country and its leader, Pedro Passos Coelho, was appointed as the Prime Minister on 16 June 2011. However, the change of the majority has not stabilized politics in Portugal. Since then the life of the government has been characterized by tensions with opposition parties, by the request for several votes of no-confidence, especially on the implementation of the new economic governance through the budgetary process, and by government's reshuffles. The harsh political struggle in Parliament, which is also a consequence of the unpopular decisions the Government has to take given the bailout, proves that a legislature always has the chance to defeat the Government in office, but this cannot become the routine.<sup>35</sup>

## **7. CONCLUSION. THE HARD TASK OF BEING A PARLIAMENT IN A MEMBER STATE RECEIVING FINANCIAL ASSISTANCE OR SUPPORT**

It is commonly acknowledged that the Eurozone crisis and the reform of the economic governance in the EU have severely undermined the budgetary autonomy of national Parliaments.

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<sup>35</sup> Also the resignation of Berlusconi's government in November 2011 has somewhat linked to the financial troubles experienced by Italy, although also issues of purely internal politics played a role. The rejection by the Parliament of the law adopting the annual audit report of the State, a financial document that does not introduce any new provision into the legal system, but which is highly symbolic as it shows how the budget of the government has been implemented, was at the origins of the process that led to the resignation. In between the first (10 October 2011) and the second (8 November 2011) attempt to let the audit report passed in Parliament, the Government had also negotiated with the European Commission and the ECB the adoption of very restrictive measures for the labour market as an exchange to the financial support provided to Italy through the Securities Market Programme by the ECB.

However, the powers of Parliaments had been already affected by many other factors in the last decades, including the process of European integration. The Eurozone crisis, on the one hand, contributes to add further constraints on the discretion of Parliaments; on the other, provides an opportunity to develop their role and position in the national constitutional scene. Such an assessment is of course conditioned by the specific financial situation in which a Parliament operates, if it is placed in a lender or debtor country and to what extent this country receives financial support or assistance.

Aiming to react to the lack of transparency in the decision making process of the new economic governance and in the attribution of the responsibility for the actions taken, between European and national institutions and between legislative and executive bodies, also in the debtor countries analysed the duty of information of the executive in favour of Parliaments has been strengthened up to a point which had never be achieved so far. Fiscal councils have been set up with the aim to supply Parliaments with independent information for a more autonomous assessment of the Government's performance. Also the scrutiny and the oversight powers of Parliaments have been enhanced as to guarantee the control of the position of the Government before and after its engagement at European level. Parliaments can exercise a veto on some decisions, though this is unlikely to happen or it will be used in *extrema ratio*. Whether this shift in parliamentary powers is able to compensate the loss of legislative powers and of budgetary autonomy suffered depends on the constitutional system of each Member State and on the degree of conditionality imposed, like the case of Portugal clearly shows.

In general the more parliamentary prerogatives enjoy constitutional protection, the more the Parliament is preserved in its position in the aftermath of the Eurozone crisis. Constitutions and organic laws have been amended in order to entrench parliamentary powers in sources of law with a reasonable expectation of endurance and defining a standard for constitutional review. By the same token, it might also happen that in a situation of strict conditionality and of several limitation of social rights – again, like in Portugal – the ‘guardian’ of the Constitution – the Constitutional Court –, when engaged in balancing parliamentary powers exercised in compliance with international and European obligations against other constitutional provisions, like principle of equality, gives prominence to the latter.

Finally, the reaction of Parliaments to the crisis is different according to the measures at stake, although some general trends can be pointed out. None of the three Parliaments analysed has engaged in a major attempt to revise its rules of procedure as to develop in the internal rules the tools and the powers fixed in the new constitutional provisions, organic laws, and ordinary legislation. These Parliaments are still testing if new special parliamentary procedures are needed to

implement the reform of the economic governance properly and, if so, how they should be shaped. The lack of revision of the internal rules does not appear to derive from the failure to achieve consensus. Rather even the most controversial measures of the economic governance – like the Fiscal Compact and the TESM – have been authorised and approved by overwhelming majorities in Parliament. Possibly on some occasions, because of the urgency or of the lack of information available, the Italian, the Portuguese and the Spanish Parliaments have remained inactive and no parliamentary debate has taken place. While the three legislatures have been able to easily accommodate their activity to the timeline and to the requirements of the European Semester, often applying the ordinary tools used for the ‘ordinary’ scrutiny on EU affairs, much more difficult has been and still is for them to cope with the ‘most innovative’ sources of law<sup>36</sup> – Memoranda of Understanding, bilateral loan agreements, TESM, Fiscal Compact, etc. – and to really oversee their effects and their implementation.

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<sup>36</sup> Also defined, for example, as ‘postnational norms’: see S. Bardutzky & E. Fahey, ‘Judicial review of Eurozone law: the adjudication of postnational norms in the EU courts, plural’, *Michigan Journal of International Law*, vol. 34, 2013, p. 101-111.

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The LUISS School of Government (SoG) is a graduate school training high-level public and private officials to handle political and government decision-making processes. It is committed to provide theoretical and hands-on skills of good government to the future heads of the legislative, governmental and administrative institutions, industry, special-interest associations, non-governmental groups, political parties, consultancy firms, public policy research institutions, foundations and public affairs institutions.

The SoG provides its students with the skills needed to respond to current and future public policy challenges. While public policy was enclosed within the state throughout most of the last century, the same thing cannot be said for the new century. Public policy is now actively conducted outside and beyond the state. Not only in Europe but also around the world, states do not have total control over those public political processes that influence their decisions. While markets are Europeanised and globalised, the same cannot be said for the state.

The educational contents of the SoG reflect the need to grasp this evolving scenario since it combines the theoretical aspects of political studies (such as political science, international relations, economics, law, history, sociology, organisation and management) with the practical components of government (such as those connected with the analysis and evaluation of public policies, public opinion, interests' representation, advocacy and organizational leadership).

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LUISS School of Government welcomes unsolicited working papers in English and Italian from interested scholars and practitioners. Papers are submitted to anonymous peer review. Manuscripts can be submitted by sending them at [sog@luiss.it](mailto:sog@luiss.it). Authors should prepare complete text and a separate second document with information identifying the author. Papers should be between 8,000 and 12,000 words (excluding notes and references). All working papers are expected to begin with an indented and italicised abstract of 150 words or less, which should summarise the main arguments and conclusions of the article. Manuscripts should be single spaced, 11 point font, and in Times New Roman.

Details of the author's institutional affiliation, full postal and email addresses and other contact information must be included on a separate cover sheet. Any acknowledgements should be included on the cover sheet as should a note of the exact length of the article. A short biography of up to 75 words should also be submitted.

All diagrams, charts and graphs should be referred to as figures and consecutively numbered. Tables should be kept to a minimum and contain only essential data. Each figure and table must be given an Arabic numeral, followed by a heading, and be referred to in the text. Tables should be placed at the end of the file and prepared using tabs. Any diagrams or maps should be supplied separately in uncompressed .TIF or .JPEG formats in individual files. These should be prepared in black and white. Tints should be avoided, use open patterns instead. If maps and diagrams cannot be prepared electronically, they should be presented on good quality white paper. If mathematics are included, 1/2 is preferred.

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## SOG WORKING PAPER SERIES

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The LUISS School of Government aims to produce cutting-edge work in a wide range of fields and disciplines through publications, seminars, workshops, conferences that enhance intellectual discourse and debate. Research is carried out using comparative approaches to explore different areas, many of them with a specifically European perspective. The aim of this research activities is to find solutions to complex, real-world problems using an interdisciplinary approach. LUISS School of Government encourages its academic and student community to reach their full potential in research and professional development, enhancing career development with clear performance standards and high-quality. Through this strong focus on high research quality, LUISS School of Government aims to understanding and influencing the external research and policy agenda.

This working paper series is one of the main avenues for the communication of these research findings and opens with these contributions.

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